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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

NO. 195

COLUMBUS & GREENVILLE RAILWAY CO., ET AL.,

Petitioners and Appellants,

VS.

W. J. MILLER, STATE TAX COLLECTOR FOR THE USE OF THE MISSISSIPPI LEVEE DISTRICT,

Respondent and Appellee.

BRIEF FOR RESPONDENT AND APPELLEE

GEORGE BUTLER,
J. ED. FRANKLIN,
LAMAR F. EASTERLING,
C. B. SNOW,
SIMON ROSENTHAL,
ATTORNEYS FOR RESPONDENT AND APPELLEE.

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BRIEF FOR RESPONDENT AND APPELLEE

The opinions of the Supreme Court of Mississippi are reported as follows:

W. J. Miller, State Tax Collector, v. Columbus & Greenville Railway Co., 154 *Miss.* 317, 122 *So.* 366; *Columbus & Greenville Railway Co., v. W. J. Miller, State Tax Collector*, 127 So. 784. (Mississippi Report not published to date.)

STATEMENT OF THE CASE

Under the laws of the State of Mississippi, that part of the state lying and situate in what is known as the Mississippi Delta, comprising all of the state subject to overflow from the waters of the Mississippi and its large tributaries, is required to build, repair and maintain at its own expense

the levees located therein. The Delta is divided into two separate and distinct districts, the Mississippi Levee District and the Yazoo-Mississippi Delta Levee District. An attempt was made to divide the two districts in order that each district may maintain the levees which protected the land situated in the district. This case is in behalf of the Mississippi Levee District, comprising the southern half of the Delta.

The state at large pays no money towards the building, maintenance and upkeep of the levees and the legislature of the State of Mississippi, except by special act, exercises no supervision over the Levee System. A separate and distinct system of taxation is used in each district to raise the money to build, repair and maintain the levees.

The Mississippi Levee District was incorporated as a political subdivision by an act of the Mississippi Legislature, approved November 27th, 1865. Under the original act, the board of commissioners was authorized and empowered to levy a land tax of ten cents per annum on each and every acre of land in the district except school lands, to be designated as the acreage tax, and a uniform tax of one cent per annum on each and every pound of lint cotton raised and gathered in the district, to be designated as the cotton tax.

By an amendment approved February 21st, 1878, the commissioners were authorized to levy and assess, in addition to the acreage and cotton tax, an ad valorem tax of not more than five mills upon the assessed value of all property, real and personal, lying in the district.

By Chapter 7 of the Act of 1886, the commissioners were authorized and empowered to levy a mileage tax on the railroads in the district. It was about this time that the railroads entered the levee district. The Act of 1886 was amended by Chapter 125 of the Laws of 1908 so as to read as follows:

"Amendment to law levying taxes on railroad companies for support of levee system.

"Section 1. Be it enacted by the Legislature of the State of Mississippi, That Chapter VII of the Sheet Acts of 1886, be, and the same is hereby amended so as to read as follows:

"That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi levee district, and of paying the debts and liabilities incurred therefor, by the board of Mississippi levee commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, towit: Upon each and every mile of the main or trunk line of all broad or standard gauge railroads, not including sidetracks or switches, the sum of $200 per annum; upon each and every mile of narrow gauge railroad or railroads of less width than standard gauge, not including sidetracks or switches, the sum of $50 per annum; upon each and every mile of broad or standard gauge railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to a branch of a main or trunk line, or to connect such main or trunk line with some other system, the sum of $120 per annum; provided, that no railroad or branch railroad shall be subject to taxation under this Act while the

same is in process of construction, but if any part thereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished."

The amended act of 1908 was again amended by Section 1, Chapter 282 of the Mississippi Laws of 1914.

The predecessors in ownership of petitioner's road paid the taxes under the Act of 1914 without objection. The Columbus & Greenville Railway Company, petitioner here, was organized in 1923. In 1926 the law was again amended by Section 1, Chapter 259, Mississippi Laws of 1926. It is this section which is now before this Court. We quote in full Section 1, Chapter 259, Mississippi Laws of 1926:

"That for the purpose of contributing to the expense of building, maintaining and repairing levees in the Mississippi levee district, and of paying the debts and liabilities incurred thereof, by the board of Mississippi levee commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit: Upon each and every mile of the main or trunk line of all broad or standard gauge railroads, not including side tracks or switches, the sum of $350.00 per annum; upon each and every mile of narrow gauge railroad or railroads of less width than standard gauge, not including side tracks or switches, the sum of $87.50 per annum; and upon each and every mile of broad or standard gauge railroads, not used and operated as a main or trunk line, but constituting and used as a feeder to or a branch of a main or trunk line, or to connect such main or

trunk line with some other system, the sum of $210.00 per annum; provided, that no railroad or branch railroad shall be subject to taxation, under this act while the same is in process of construction, but if any part thereof shall be used for profit, that part so used shall be taxed, although the whole of said railroad or branch may not be finished; *provided further that the tax per mile per annum on the main line of any railroad company which does not own in excess of twenty-five miles of railroad in the Mississippi levee district shall be* $50.00 *per annum.*" (Italics ours)

By omitting the part of the Act of 1926, which is shown in italics, we have the full text of the Act of 1914. It is the Amendment of 1926, shown in italics, that was declared unconstitutional by the Mississippi Supreme Court. The Mississippi Levee District is therefore maintained at the present time by four schemes or systems of taxation, to-wit:

(1) An acreage tax of two cents per acre on each and every acre of land in this district.

(2) A cotton tax on every pound of lint cotton raised and gathered in the levee district. (Cotton being the only crop grown in commercial quantities in the district.)

(3) An ad valorem tax upon all property in the district, real and personal.

(4) A mileage tax on railroads.

In 1890, the State of Mississippi adopted its present constitution, and said constitution provides as follows:

"Article 11. Levees.

"Section 227. A levee system shall be maintained in the state as provided in this article.

* * * *

"Section 236. The legislature shall impose for levee purposes, in addition to the levee taxes heretofore levied or authorized by law, a uniform tax of not less than two nor more than five cents an acre per annum upon every acre of land now or hereafter embraced within the limits of either or both of said levee districts. The taxes so derived shall be paid into the treasury of the levee board of the district in which the land charged with the same is situated; and the legislature, by the act imposing said tax, shall authorize said levee boards to fix the annual rate of taxation per acre within the limits aforesaid, and thereby require said levee boards, whenever a reduction is made by them in their other taxes, to make a proportionate reduction in the acreage tax hereinbefore mentioned; but said acreage tax shall not be reduced below two cents per acre per annum; and all reductions in such taxation shall be uniform in each of said districts; but the rate of taxation need not be the same in both of them; and such specific taxes shall be assessed on the same assessment roll, and collected under the same penalties, as the ad valorem taxes for levee purposes, and shall be paid at the same time with the latter. And no levee board shall ever be permitted to buy lands when sold for taxes; but the state shall have a prior lien for the taxes due thereto. The legislature may provide for the discontinuance of the tax on cotton, but not in such manner as to affect outstanding bonds based on it, and on the discontinuance of the tax on cotton, shall impose another tax in lieu thereof; but the legislature may repeal the acreage tax re-

quired to be levied hereby after the first day of January, A. D., 1895.

"Section 237. The legislature shall have full power to provide such system of taxation for said levee districts as it shall, from time to time, deem wise and proper.

"Section 238. No property situated between the levee and the Mississippi river shall be taxed for levee purposes, nor shall damage be paid to any owner of land so situated because of its being left outside a levee."

The proviso or amendment of 1926 is so clearly contrary to the spirit and letter of both the Constitution of the United States and of the State of Mississippi that the State Tax Collector decided to ignore said proviso and demanded of the Columbus & Greenville Railway Company that it pay the tax on the same basis as the other railroads of the same class in the district.

The State Tax Collector charged that the provision contained in said Section 1, Chapter 259, Laws of 1926, that,

"Provided further that the tax per mile per annum on the main line of any railroad company which does not own in excess of twenty-five miles of railroad in the Mississippi levee district shall be $50.00 per annum."

is unconstitutional because it violates the 14th Amendment to the Federal Constitution in that it denies to the other railroads in the district the equal protection of the law, and takes their property without due process of law, and that it violates the "due process" and "uniformity and equality

clause" of the Mississippi Constitution Section 14 and Section 236, which requires that "All reductions in such taxation shall be uniform in each of said districts," (page 6), referring in the latter section to the levee districts. It was also contended by the State Tax Collector that the law failed to comply with the mandatory provisions of Section 234 of the constitution, which requires that all revenue laws dealing with taxes in the levee district be published in a newspaper in said district. (See appendix for full text of Sections 14, 112 and 234.)

At the first trial, the Circuit Court of Montgomery County, Mississippi, sustained a demurrer to the declaration and the State Tax Collector appealed to the Supreme Court of the State. The Supreme Court reversed and remanded the case, and we quote the pertinent part of the opinion: (154 Miss. 314, 122 So. 366)

> "Smith, C. J. The defendant owns and operates a railroad, 18.41 miles of which lie in the Mississippi levee district, and this suit is to recover from it the sum of $12,150.60, levee taxes alleged to be due by it for the years 1926 and 1927, and statutory damages thereon. A demurrer to the tax collector's declaration was sustained in the court below, and his suit dismissed.
>
> "Chapter 7, Laws of 1886, imposed a levee tax on railroads in the Mississippi levee district of $100 per annum on each mile of the main line thereof in the district. This statute was amended by chapter 282, Laws of 1914, so as to impose a tax of $350 per annum upon each mile of the main line of railroads in the district. By Chapter 259, Laws of 1926, the 1914 statute was amended by adding

thereto the following: 'Provided, further, that the tax per mile per annum on the main line of any railroad company which does not own in excess of 25 miles of railroad in the Mississippi levee district shall be $50.00 per annum'.

"The appellee paid $50 per mile on its 18.41 miles of railroad in the district for the years 1926-1927, and this suit is to recover the difference between that amount and $350.00 per mile and damages thereon. The appellant's contentions are: That chapter 259, Laws of 1926, is void, and that consequently chapter 282 of the Laws of 1914 remains in full force and effect; but, if mistaken in this, that the proviso in chapter 259, Laws of 1926, is void.

"(1) Chapter 259, Laws of 1926, divides railroads into two classes: First, railroads having not more than 25 miles of railroad in the levee district; and, second, all other railroads therein. The ground of the appellant's contention is that this classification has no reasonable relation to the purpose for which the statute was enacted, but is arbitrary and unreasonable, and therefore in violation of the due process and equal protection clauses of the Fourteenth Amendment to the Federal Constitution. This is so manifestly correct that the citation of authorities therefor would be supererogatory. It will not be necessary for us to decide whether this results simply in the proviso of chapter 259, Laws of 1926, being void, or in the whole statute being void, for in either event the tax which the appellee will have to pay will be the same; that is, $350 per annum on each mile of its railroad in the levee district."

On the second trial, the Circuit Court rendered judgment against the Columbus & Greenville Railway Company on the basis of $350.00 per mile. From this decision the railroad appealed and the Supreme Court affirmed the decision of the Circuit Court and rendered the following opinion:

> "Smith, C. J. This case is ruled by the opinion rendered on the former appeal herein (154 Miss. 317, 122 So. 366), to which we adhere; and the evidence excluded, if competent, as to which we express no opinion, could not have changed the result.
>
> "Affirmed."

ARGUMENT
Purpose of Tax

The purpose of the act as recited in the preamble thereof is as follows:

> "That for the purpose of contributing to the expenses of building, maintaining and repairing levees in the Mississippi levee district, and of paying the debts and liabilities incurred thereof, by the board of Mississippi levee commissioners, the following tax is hereby levied and assessed upon all railroads and parts of railroads lying and situated in the said levee district, to-wit:"

Section 238 of the Mississippi Constitution provides that:

> "No property situated between the levee and the Mississippi river shall be taxed for levee purposes * * * * *."

The intention and purpose of the law is that only property receiving benefits from the levees shall be taxed for their maintenance. The partakers of the benefits should bear proportionately the burden of the cost. *Williams vs. Commack*, 27 Miss. 209, 61 Am. Dec. 508; *Alcorn vs. Homer*, 38 Miss. 652; *Daily vs. Swope*, 47 Miss. 367; *Vassar vs. George*, 47 Miss. 713.

The brief of petitioners and appellants is divided into two main parts. The first contention is that the Act of 1886 and the amendatory Act of 1914 are unconstitutional and violative of the Fourteenth Amendment to the Federal Constitution. The second part of the brief is an attempt to support the petitioners' contention that the Act of 1926 is constitutional and the decision of the Mississippi Supreme Court should, therefore, be reversed. These contentions are inconsistent. On direct appeal the appellants contend that the mileage tax on railroads is unconstitutional, yet contend that a mileage tax statute which places a smaller tax on petitioner railroad company than on the other railroads in the district is constitutional.

Taxes Must Be Based on Benefit.

All taxation for said district must necessarily be based upon and governed by the standard of benefit, and all classification must be based upon and bear a reasonable and just relationship in respect to such benefit. *Adams v. Standard Oil Company*, 97 Miss. 879, 53 So. 692; *Chi. & St. Paul Railway Co. vs. Westby*, 178 Fed. 619; *Southern Ry. Co. vs. Green*, 216 U. S. 400, 30 Sup. Ct. 287; *Magoun vs. Bank*, 170 U. S. 283, 18 Sup. Ct. 594, 42 L. ed. 1037; *Milken*

vs. Moffat Tunnel Imp. Dist., 262 U. S. 710, 43 Sup. Ct. 204; *Myles Salt Co. vs. Iberia, etc.*, 239 U. S. 478, 60 L. ed. 392; *Gulf C. & S. F. R. R. Co. vs. Ellis*, 165 U. S. 150, 17 Sup. Ct. 25, 41 L. ed. 666; *Voight vs Detroit*, 184 U. S. 115, 22 Sup. Ct. 337; 46 L. ed. 459. *General American Tank Car Corp. vs. Day*, 270 U. S. 367, 70 L. ed. 635; *Southern P. Co. vs. Kentucky*, 222 U. S. 63, 56 L. ed. 96. The benefit in this case applies to protection, and privilege, as well as betterment.

The General Rule As To Classification.

The classification of property for taxes must have some basis, reasonable or unreasonable, other than mere accident, whim or caprice. There must be some support of taste, policy, difference of situation or the like, or some reason for it, even if it is a poor one. If the classification results in an arbitrary and oppressive discrimination in regard to a class of citizens or a species of property, it contravenes the equal protection guaranty of the Federal Constitution. Such classification should treat all in the same class alike, and should not impose a heavier burden upon one than another of the same class, size, situation and value. The classification must rest upon some ground of difference having a fair and substantial relation to the object of the legislation. *Cotting vs. Godard*, 183 U. S. 79, 46 L. ed. 92; *Louisville Gas & Electric Co. vs. Coleman*, 277 U. S. 32, 48 Sup. Ct. 423, 72 L. ed. 770; *Connolly vs. Union Sewer Pipe Co.*, 184 U. S. 540, 22 Sup. Ct. 431; *People vs. Mensching*, 187 N. Y. 8, 10 Ann. Cas. 101; *Fiscal Court vs. F. & A. Cox Co.* (Ky.), 117 S. W. 296, 21 L. R. A. (N. S.) 83; *A. & P. Tea Co. vs. Doughton*, 144 S. E. 701, 196 N. C. 145; *Fountain Park Co. v. Hensler* (Ind.), 155 N. E. 465, 50 A. L. R. 1518; *Detroit R. R. Co.*

vs. Fuller, 205 Fed. 86; *Nashville etc., R. R. Co. vs. Taylor*, 86 Fed. 168; *Vicksburg vs. Mulane*, 106 Miss. 199, 63 So. 412; *Adams vs. Standard Oil Co.*, 97 Miss. 879, 53 So. 692; *Hyland, Sheriff, vs. Sharp*, 41 So. 264, 88 Miss. 567, 12 C. J. 1152; *State vs. Banner Cleaners & Dyers, Inc.*, 127 So. 370, 170 La. ———; *Southern Ry. Co. vs. Green*, 216 U. S. 400, 30 Sup. Ct. 287.

In determining whether a state taxing law contravenes rights secured by the Federal Constitution the decision must depend "not upon any mere questions of form, construction or definition, but upon the practical operation and effect of the tax imposed."

Cooley, Law of Taxation, 4th Ed., Vol. 1, page 313; *Schaffer vs. Carter*, 252 U. S. 37, 64 L. Ed. 445, 40 Sup. Ct. Rep. 221.

History of Tax in District

We have outlined, at page 5 of this brief, the system of taxation in the Mississippi levee district. This system was inaugurated when the levee districts were first organized and the lands were first reclaimed from the backwaters of the Mississippi river.

The Act of 1865, Section 4, creating the district assessed "a uniform tax of ten cents per annum on each and every acre of land in said counties" and assessed a uniform tax of one cent per pound per annum upon each and every pound of lint cotton that may be raised and gathered in the counties comprising the district. Section 10 of the act makes

the taxes levied and collected a special fund and trust to be used by the Levee Board, first in payment of bonds and second in payment of other debts and liabilities.

Under Section 3, Laws of 1872 of Mississippi, the Levee Commissioners were authorized to levy and assess a uniform ad valorem tax upon the value of each and every acre of land lying and being situated in said district, and Section 4 of the Act of 1872 required the tax collector of each county embraced in the district to collect the tax upon the same terms and conditions as he collected the state and county taxes.

By the Act of 1877, Laws of Mississippi, a tax of five cents per one hundred pounds per annum on every one hundred pounds of cotton seed raised and gathered in the district was imposed. This tax was subsequently repealed by the Act of 1878. Prior to 1884 the levees were, therefore built and maintained by money raised by these three systems of taxation, to-wit, an acreage tax, being the same for every acre in the district, a cotton tax, being the same for every pound of cotton in the district, and an ad valorem tax having the same rate throughout the district. In assessing the acreage and cotton tax, the tax was based on quantity alone, without regard to the value or quality.

In the Eighties, the construction of railroads was begun in the Mississippi levee district and in 1886 the Legislature of Mississippi passed what is commonly designated as the "Mileage Tax Act." In 1890 Mississippi adopted its present constitution and by Section 236 the constitution retained the system of taxation then used in the levee districts.

The constitution of Mississippi, therefore, recognizes in all respects the mileage tax.

By Chapter 282, Mississippi Laws of 1914, the Act of 1886 was amended. By this act, the full text of which appears at page 4 of this brief, a uniform tax of $350.00 per mile per annum was levied on all main lines in the district. It is this act that petitioners contend is violative of the Fourteenth Amendment to the Federal Constitution.

It may be well at this time to direct the Court's attention to the fact that the mileage tax has been in existence since 1886 and that the Yazoo & Mississippi Valley Railroad Company, the other railroad in this district, has paid this tax since said time and that the Georgia & Pacific Railroad, which constructed the present road bed of the Columbus and Greenville Railway Company and the Southern Railway Company, which purchased same from the Georgia & Pacific, paid the tax. The petitioner, Columbus & Greenville Railway Company, was organized in 1923 and took over the present road bed and right of way. The State of Mississippi and the Mississippi levee district did not force the Columbus & Greenville Railway Company to enter the levee district. It entered the district with full knowledge of the mileage tax and with full knowledge that said tax had been levied and collected for thirty-eight years. It certainly cannot be heard to contest the validity of the tax and is estopped from attacking the system of taxation in vogue in the district at the time it entered.

System of Taxation Not Peculiar to State of Mississippi

The system of levee taxes used by the State of Mississippi is identically the same as that adopted and used in the levee districts of Louisiana. Louisiana Constitution of 1921, Article 26.

In 1890 the Louisiana Legislature created two of its main levee districts. Chapter 97, page 107, Laws of 1890, created "The Atchafaylaya Basin Levee District," and Chapter 95, page 99, created "The Pontchartrain Levee District." The Atchafaylaya Basin Levee District, by Section 8, was authorized to levy an ad valorem tax of ten mills, by Section 9 the commissioners were authorized to assess and collect an acreage tax of two and one-half cents and "$60.00 per mile of railroad lines within said district;" and Section 10 to levy and assess a tax of twenty-five cents per bale of cotton; twenty-five cents per thousand pounds of sugar; one and one-half cents per barrel of syrup and five cents per barrell on molasses, and similar taxes on produce.

The Ponchartrain Levee District has the same system of taxation and under Section 11 a tax of "$100.00 per mile on each and every mile of main line of railroad within said district" was assessed and collected.

This system of taxation has been repeatedly upheld by the Louisiana Supreme Court. *Morgan's Louisiana & T. R. & S. S. Co. vs. Aucoin, Tax Collector*, 140 La. 768, 73 So. 859; *J. H. Hines Co., Inc. vs. Guillot, Sheriff*, 153 La. 319, 95 So. 794. Writ of error dismissed 266 U. S. 58.

In *Board of Commissioners for Buras Levee District vs. Mialegvich*, 52 La. Ann., page ——, 27 So. 790, the Louisiana Supreme Court upheld a special assessment for levee taxes of two and one-half cents per barrel of oysters gathered from the waters of the district.

In 1904, Act No. 909, Laws of Louisiana, the Red River and Bayou Desglaizes Levee & Drainage District was created. The Louisiana Legislature carried forward the same system of taxation. Section 6 levied an ad valorem tax of ten mills, Section 7 an acreage tax of five cents, Section 8 a tax of fifty cents a bale on cotton and Section 9 a mileage tax on railroads of $60.00 a mile. By Act No. 195, page 256, Laws of Louisiana of 1928, Section 7 was amended and the acreage tax increased to twenty-five cents and the mileage tax to $100.00 per mile.

It will, therefore, be noted that the two states near the mouth of the Mississippi river, Louisiana and Mississippi, have, since the creation of the levee districts, adopted the same system of taxation. This system has been in vogue in said state since the creation of the levee districts. The systems of taxation have been repeatedly before the Supreme Courts of both states and before the Supreme Court of the United States. No attack has ever been made on the constitutionality of the mileage tax for levee benefits in this Court. The Columbus & Greenville Railway Company, created in the year 1923, with full knowledge of the systems of taxation, now comes before the Supreme Court of the United States and asks that the taxation systems for the levee districts of Louisiana and Mississippi be declared un-

constitutional. It is our contention that said systems are fair and equitable and have been so recognized ever since the creation of the districts, and the petitioner, a newcomer, cannot be heard, and is estopped, to contest the validity of said tax systems.

If the mileage tax is unconstitutional, then the Cotton tax of one fifth cent per pound, ($1.00 a bale), the acreage tax, and in Louisiana the sugar, molasses and oyster taxes based upon a fixed sum per barrel, are unconstitutional. That is the entire system of taxation used in the levee districts since their creation are unconstitutional.

Columbus & Greenville Railway Company is Estopped to Object to Mileage Tax.

The Columbus & Greenville Railway Company, having purchased its property after the system of taxation had been in existence for over thirty-seven years, is to that extent precluded from resisting said taxes. *J. H. Hines Co. vs. Guillot, Sheriff*, 153 La. 319, 95 So. 794. Writ of error dismissed for want of jurisdiction, 266 U. S. 58, 69 L. Ed. 452, 45 Sup. Ct. 89. Quoting.

> "The Act 206 of 1912 increased the acreage tax to 10 cents, and the Act No. 202 of 1918 again increased it to 25 cents per acre. So that when plaintiff bought its property on April 1, 1918, the ad valorem tax and the acreage tax of 10 cents per acre were already being levied; and, under the ruling in *Duffy vs. Penegwy*, supra, plaintiff is to that extent precluded from resisting them . . . ."

When the Columbus & Greenville Railway Company accepted its charter from the State of Mississippi and went into the levee district to do business, it entered into a contract with the State of Mississippi. Commencing with the Dartmouth College case, the Supreme Court of the United States has repeatedly held that the rights granted to corporations under charters are contractual rights. When the railroad company accepted its charter and entered the levee district, it contracted with the State of Mississippi that it would obey its laws and would pay all taxes legally assessed against it. It knew that under the Laws of the State of Mississippi it was liable for a mileage tax in the levee district and it contracted to pay said tax. *State vs. Chicago & N. W. Railway Co.*, 128 Wisc. 449, 108 N. W. 594; *People, Ex Rel, East River Terminal Co. vs. State Board of Tax Commissioners* (*City of New York intervener*), 160 App. Div. 771, 146 N. Y. S. 112, (Same Style) 79 Misc. 134, 140 N. Y. S. 722; *Ford vs. Delta Pine and Land Co.*, 164 U. S. 662, 17 Sup. Ct. 230, 41 L. Ed. 590. (The Ford case involves taxation in this district.)

Mileage Tax Valid.

It is universally held that a special assessment for reclaiming a district from inundation laid upon land in proportion to its area, is valid dispite constitutional provisions of valuation and uniformity. The creation of levee districts is done under the police power of the state and its powers of taxation are not confined to the strict rules of uniformity required under the regular and ordinary taxes. From our investigation, we find that in practically every state of the union that drainage and levee taxes are levied

in the same manner as in the Mississippi levee district. It is customary to levy a fixed tax on each and every acre in the district without regard to the value of the land. *Houck vs. Little River Drainage District*, 60 L. Ed. 266, 239 U. S. 254; *Cole vs. Norhouse Drainage District*, 270 U. S. 45, 70 L. Ed. 463; *Egyptian River Co. vs. Hardy*, 27 Mo. 495; *Trulock Irrigation District vs. Williams*, 76 Cal. 360, 18 Pac. 379; *McGehee vs. Mathis*, 21 Ark. 40; *Richardson vs. Morgan*, 16 La. 429. Also see the Louisiana and Mississippi cases heretofore cited.

The same rule and reason that upholds the validity of the Act of 1886, as amended by the Act of 1914, assessing the same tax per mile on all railroads in the district, invalidates the Act of 1926, fixing the rate per mile of one railroad at $350.00 and the rate per mile of the petitioner railroad company at $50.00 a mile.

The legislature and the levee board is clearly within its rights in placing all railroads in the district in one class and placing a mileage tax thereon. *Pittsburgh, etc., R. R. Co. vs. Backus*, 154 U. S. 431, 14 Sup. Ct. 1114, 38 L. Ed. 1031; *Cleveland Railroad Co. vs. Backus*, 154 U. S. 443, 14 Sup. Ct. 1122, 38 L. Ed. 1041; *Western Union Telegraph Company vs. Attorney General*, 125 U. S. 530, 31 L. Ed. 790; *Pullman Palace Car Co. vs. Pennsylvania*, 141 U. S. 18, 35 L. Ed. 613.

The assessment of the same class and kind of property, occupying the same situation, at a different rate of taxation for each owner, is clearly violative of the Fourteenth Amendment to the Federal Constitution. *Houck vs. Little River*

District, 239 U. S. 254, 60 L. Ed. 266; *Louisville Gas & Electric Co. vs. Coleman*, 277 U. S. 32, 72 L. Ed. 770; *Royster Guano Co. vs. Virginia*, 253 U. S. 412, 64 L. Ed. 989; *Cotting vs. Godard*, 183 U. S. 79, 46 L. Ed. 92; *Fiscal Court of Owen County vs. F. & A. Cox Co.*, 117 S. W. 296 (Ky.), 21 L. R. A. (N. S.) 83.

The unconstitutionality of the amendment made in 1926 is clearly demonstrated by a discussion of the operation and effect of the tax in this case

The Practical Operation and Effect of the Tax in This Case.

The practical operation and effect of the amendment of 1926 is to exempt the Columbus & Greenville Railway Company from its proper proportion of the tax, and to impose an arbitrary and unreasonable proportion upon the Yazoo & Mississippi Valley Railroad Company, and favors a Intrastate road located wholly within the state over a road located partly within and partly without the state. It amounts to an arbitrary and oppressive discrimination between two similar species of property and between two persons of the same class and situation.

The classification in the case at bar is based solely upon a mileage basis. The value of the railroad property, the business done, the gross earnings, the direction of the railroad, its closeness to the river, or even the number of years in operation are not taken into consideration.

What is the effect of the classification in this case?

All main line railroads over twenty-five miles in length pay $350.00 per mile, and all main line railroads under twenty-five miles pay $50.00 per mile. On the other hand, a narrow gauge railroad, without respect to the number of miles pays $87.50 per mile, and a branch line, without respect to the length thereof, pays $210.00 per mile, a classification so unreasonable that the Honorable Chief Justice of the Mississippi Supreme Court said that the citation of authorities was unnecessary to support an opinion declaring the same unconstitutional.

Counsel for petitioner continually called the tax a graduated tax. This is incorrect, as the tax is not a graduated one. To be classified as a graduated tax, it should have provided that a railroad shall pay $50.00 on the first twenty-five miles and $350.00 on each mile in excess thereof. But in its zeal to favor the intrastate road, the legislature has required the Yazoo & Mississippi Valley Railroad Company to pay the large sum of $350.00 on its first mile and on each and every mile.

Under this classification a main line railroad twenty-six miles in length pays $8100.00 and a main line railroad twenty-four miles in length pays only $1200.00. The petitioner operates eighteen miles in the district and is the only railroad company operating less than twenty-five miles in the district. Classification under the Act of 1926 is as follows;

Class 1. A main or trunk line standard gauge railroad, exclusive of side tracks and switches, pays on each

and every mile, $350.00, or if twenty-five miles long, it pays $8100.00.

Class 2. A narrow gauge railroad less than standard, exclusive of side tracks and switches, pays on each and every mile, $87.50, or for eighteen miles, $1575.00.

Class 3. Upon each feeder or branch of a main line or trunk line, $210.00 on each and every mile, or for eighteen miles, $3780.00.

Class 4. Main line railroad operating not in excess of twenty-five miles in the district pays $50.00 on each and every mile, or for eighteen miles, $900.00.

The petitioner operates eighteen miles in the district, and is the only railroad in Class 4.

The photostatic map of railroad mileage in the record shows the Columbus & Greenville Railroad Company runs from Greenville through Leland, *or east and west*, a distance of 18.41 miles.

The Yazoo & Mississippi Valley Railroad Company, the other railroad company in the district, has numerous branches in the district, one running from Rosedale to Dockery, *east and west*, 28.21 miles; one running from Kelso to Holly Bluff, *east and west*, 15.99 miles; one running *north and south* from Helm to Jacobs Station, designated "H. & N. W.," on the map, 9.6 miles; and one running from Hampton to Glen Allen, two miles. The Y. & M. V. system itself constitutes two main lines through the district, merging at Rolling Fork, in Sharkey County.

Yet the Yazoo & Mississippi Valley Railroad Company pays $210.00 per mile on said branch lines and the Columbus & Greenville Railroad Company pays only $50.00 on its main line.

It may be well a this point to discuss the classification of railroads under Section 186 of Chapter 118, Mississippi Laws of 1926, shown in the record at page 443 and discussed in the brief of petitioners at page 16.

The attorneys for petitioners have a great deal to say about the Yazoo & Mississippi Valley Railroad Company being classified for privilege tax purposes as a first class road and the Columbus & Greenville Railway being classified for privilege tax purposes as a third class road. This classification was purely for privilege tax purposes, and is an occupation tax based solely upon earning power and valuation of the roads and had no relation whatsoever to local improvement taxes.

Taking the classification, however, the argument of the petitioner hits back like an Australian boomerang. The Kelso-Holly Bluff branch (15.99 miles) of the Y. & M. V. runs in the same direction as the Columbus & Greenville Railway Company, (18.21 miles) yet it pays $3,357.90, while the Columbus & Greenville Railway Company pays $920.50. Both are classed as "Class 3" roads. Take the H. & N. W. branch of the Y. & M. V. system, which is classified also as a "Class 3" road. This railroad, 9.6 miles long, running between two very small towns, operated at a great loss to the railroad company, is assessed for $2,016.00, in comparison with $910.50 for the Columbus & Greenville Rail-

way Company. The Interstate Commerce Commission has since the decision in this case authorized the removal of the H. & N. W. branch for lack of necessity.

A greater inequality cannot be had than is shown by the following illustration: The Y. & M. V. Railroad Company has a small branch line running from Hampton to Glen Allen in the Southern part of Washington County, a distance of two miles. The tax on these two miles is $420.00, while the tax on the Columbus & Greenville Railroad Company is only $910.50 for a main line 18.41 miles long, across the entire levee district.

The petitioner attempts to paint the Y. & M. V. Railroad Company as a gigantic organization with splendid road beds and enormous profits, while the petitioner is only a weakling losing money and with road beds thereof about to crumble. This contention may well be answered by the evidence itself, which shows that the total capitalization of the Columbus & Greenville Railway Company is $100,000.00, (Record page 5) and that the net profit for the operation of the Columbus & Greenville Railway Company was $85,124.25 for the year 1925, $159,392.08 for the year 1926, and $105,144.07 for the year 1928 (Record page 28). The Columbus & Greenville Railway Company, when it comes to fixing a value for the purposes of taxation, is assessed at $1,000.00 per mile, but when it files a statement with the Interstate Commerce Commission for the purpose of fixing rates, it values its property at $38,000.00 per mile.

As heretofore stated, we do not think that gross earnings or valuation have any effect upon the levee taxes, which

in all cases are based upon quantity alone. We merely quote the above figures in answer to the petitioner's statement as to the value of its company.

Counsel for petitioner have much to say with reference to the effect upon the road bed of the Columbus & Greenville Railway Company of floods and of the effect upon the road bed of the Y. & M. V. Railroad Company. We answer this by two statements. As shown by the record, the Columbus & Greenville Railway Company suffered far more in proportion by the break of 1927 than the Y. & M. V. Railroad Company, and by the statement that the Y. & M. V. Railroad Company has more mileage east and west in the district than the Columbus & Greenville Railway Company.

It is a matter of common knowledge that the Mississippi river is a non-respecter of rule or reason, that its channel is ever changing and its course not straight, but winding and crooked, and it is foolish thing indeed for any man to say that because the railroad company runs east and west or north and south that it is less liable to suffer damage from overflow by the Mississippi river.

Let us view this tax from the view point of the other forms of taxation in the district.

There is levied an acreage tax of two cents per acre on land in the district. Suppose the tax was changed so as to read that a tax of one cent per acre is levied on all farms of twenty-five acres or less, and a tax of four cents per acre is levied on all farms of over twenty-five acres. Being a benefit tax, could same possibly be upheld? We think not.

A tax of one dollar per bale is levied on all lint cotton raised and gathered in the district. Were the tax changed to provide that a tax of fifty cents per bale must be paid by all farmers raising one hundred bales of cotton or less, and a tax of two dollars per bale paid by all farmers raising more than one hundred bales, could same possibly be held constitutional?. We think not. The benefit to each and every acre of land in the district and the corresponding benefit to each and every bale of cotton from the protection afforded by the levees is the same. The benefit to each and every mile of standard gauge railroad in the district is identically the same.

> "It must appear not only that a classification has been made, but also that it is one based upon some reasonable grounds—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection, and there can be no discrimination between subjects which properly belong to the same class. The right of classification is allowed in order to avoid or correct inequalities, never to create them." 26 *R. C. L., Taxation*, Sec. 216, and authorities above cited.

The effect and operation of the tax herein levied is to impose a gigantic tax in the aggregate on the Yazoo & Mississipi Valley Railroad Company, and on the other hand, to require the petitioner, Columbus & Greenville Railway Company, to pay only a nominal tax in proportion. This tax certainly bears no reasonable relationship to the purpose of the tax, which, as heretofore stated, is based solely upon the benefits of levee protection.

The Amendment of 1926, Exempting Railroads of Less than Twenty-five Miles in Length in the District from the Regular Tax and Placing a Minimum Tax Thereon, Violates the Mississippi Constitution and the Fourteenth Amendment to the Federal Constitution.

Cotting v. Godard, 183 U. S. 79, 46 L. Ed. 92; *Louisville Gas & Electric Co. vs. Coleman*, 277 U. S. 32, 48 Sup. Ct. Rep. 423, 72 L. Ed. 770; *People ex rel Farrington vs. Mensching*, 187 N. Y. 8, 10 Ann. Cas. 101; *Fiscal Court of Owen County vs. F. & A. Cox Company*, 117 S. W. 296, 21 L. R. A. (N. S.) 83; *Fountain Park Company v. George Hensler, et al* (Ind.), 155 N. E. 465, 50 A. L. R. 1518; *A. & P. Tea Company v. Doughton*, 144 S. E. 701, 196 N. C. 145; *Adams vs. Standard Oil Company*, 97 Miss. 879, 53 So. 692.

Cotting vs. Godard, 183 U. S. 79, 46 L. ed. 92.

The State of Kansas enacted a law regulating rates for stockyards in the state and providing that said law should apply only to those receiving over one hundred head of cattle per day. This Court, speaking through Mr. Justice Brewer, held the same unconstitutional, and we quote from the opinion:

> "But while recognizing to the full extent the impossibility of an imposition of duties and obligations mathematically equal upon all, and also recognizing the right of classification of industries and occupations, we must nevertheless always remember that the equal protection of the laws is guaranteed, and that such equal protection

is denied when upon one of two parties engaged in the same kind of business and under the same conditions burdens are cast which are not cast upon the other. There can be no pretense that a stock yard which receives 99 head of cattle per day a year is not doing precisely the same business as one receiving 101 head of cattle per day each year. It is the same business in all its essential elements, and the only difference is that one does more business than the other. But the receipt of an extra 2 head of cattle per day does not change the character of the business. If once the door is opened to the affirmance of the proposition that a state may regulate one who does much business, while not regulating another who does the same but less business, then all significance in the guaranty of the equal protection of the laws is lost, and the door is opened to that inequality of legislation which Mr. Justice Catron referred to in the quotation above made. This statute is not simply legislation which in its indirect results affects different individuals or corporations differently, nor with those in which a classification is based upon inherent differences in the character of the business, but it is a positive and direct discrimination between persons engaged in the same class of business, and based simply upon the quantity of business which each may do. If such legislation does not deny the equal protection of the laws, we are unable to perceive what legislation would. We think, therefore, that the principle of the decision of the Supreme Court of Kansas in *State v. Haun*, 61 Kan. 146, 47 L. R. A. 369, 59 Pac. 340, is not only sound, but is controlling in this case, and that the statute must be held unconstitutional as in

conflict with the equal protection clause of the 14th Amendment."

Louisville Gas & Electric Co. vs. Coleman, 277 U. S. 32, 48 Sup. Ct. Rep. 423, 72 L. ed. 770.

A Kentucky statute taxing the recording of mortgages running more than five years and exempting from the tax those which matured within five years or less was held to violate the equal protection clause of the Federal Constitution as arbitrary classification:

> "Here it seems clear that a circumstance which affects only taxable values has been made the basis of a classification under which one is compelled to pay a tax for the enjoyment of a necessary privilege which, aside from the amount of the recording fee which is paid by each, is furnished to another as a pure gratuity. Such a classification is arbitrary. It bears no reasonable or just relation to the intended result of the legislation. The difference relied upon is no more substantial, as the sole basis for the present classification, than a difference in value between two similar pieces of land would be invoked as the sole basis for a like classification in respect to such property. Certainly one who is secured by the state in the priority of his lien for a period less than five years enjoys a privilege which in kind and character fairly cannot be distinguished from one who enjoys a like privilege for a longer period of time. The former reasonably may be required to pay proportionately less than the latter; but to exact, as the price of a privilege which, for obvious reasons, neither safely can forego, a tax from the latter not imposed in any degree upon the for-

mer, produces an obvious and gross inequality. If the state, upon the same classification, had reversed the process and taxed indebtedness maturing within a shorter period than five years, and exempted such as matured in a longer period, the inequality probably would be readly conceded, but the constitutional infirmity, though more strikingly apparent, would have been the same."

Fiscal Court of Owen County vs. F. & A. Cox Company, 117 S. W. 296, 21 L. R. A. (N. S.) 83;

The Kentucky statute placed a tax of seventy-five dollars on each three horse wagon operated for business, and a tax of two hundred dollars on each four horse wagon operated for business. The tax, being such an arbitrary discrimination and distinction, was held void.

"Furthermore, the order itself shows that the owner of a four-horse wagon is required to pay three times as much tax as the man who operates a three-horse wagon, when there is nothing in the character of the wagons to justify such inequality. It may be conceded that a reasonable classification for the purpose of license taxes may always be made. Classification based upon the character of the vehicles and the number of horses used in connection with them may be proper (*Smith v. Louisville*, 9 Ky. L. Rep. 779, 6 S. W. 911), but the classification sought to be made in this case is manifestly unequal and unreasonable. It cannot be said to be reasonable because it bears alike upon all owners of four-horse wagons. The class of persons whose occupations are taxed are those who run and operate vehicles for hire. The taxing power may subdivide this class, but it cannot

unjustly discriminate between the subdivisions so made. As the order in question unjustly discriminates between the owners of three-horse vehicles and the owners of four-horse wagons, it follows that the license fee of $200, imposed upon four-horse wagons, is therefore void. *Livingston v. Paducah*, 80 Ky. 656; 1 *Dill, Mun. Corp.* 323; *Simrall v. Covington*, 90 Ky. 444, 9 L. R. A. 556, 29 Am. St. Rep. 398, 14 S. W. 369; *Cooley, Tax.* 127; *Hager v. Walker*, supra."

The Authorities Cited by Petitioners and Appellants Distinguished.

We note that most of the decisions in which the tax on railroads for special improvements have been declared unconstitutional are those dealing with road improvement districts.

In *Road Improvement District No. 1 vs. Missouri Pacific Railroad Co.*, 2 Fed. (2) 340 (Ark.), the tax was held invalid because,

> "No direct benefit on account of the construction of the highway would result to the railroad company, but that any benefit attempted to be shown was indirect, remote, doubtful and speculative in its nature, and that a purported agreement between the railroad and the commissioners attempting to fix the benefits upon a mileage basis was void."

The evidence further showed that for the construction of a road of 11.2 miles, the railroad with 9.7 miles of rail-

road in a purely farming section was required to pay $2,300.00 a mile.

In *K. C. S. Railway Company vs. May*, 2 Fed. (2) 680 (Ark.), the evidence showed that the benefit to the railroad company from the construction of a gravel highway was purely problematical and that the railroad was assessed on the basis of $10,000.00 a mile.

The road district cases cited in the brief of appellants can all be so distinguished. Who can say that the construction of a gravel highway through a farming section will benefit the property of railroad companies to such a greater extent than the property of individuals and corporations? In fact, the construction of modern roads has in many instances destroyed the profit of railroad companies and the numerous cases before this court and the Interstate Commerce Commission clearly show that the profit from passenger business has been completely destroyed insofar as local transportation is concerned. The construction of drainage and levees build up the community and increase the products of the community, thereby increasing the freight to be hauled by the railroad companies. The construction of levees and drainage protects the property in the community and saves it from destruction from overflow. Road districts are governed by betterments, while levee districts are governed by betterments, privileges and protection.

In *Kansas City S. Railway Co. vs. Ogden Levee District*, 15 Fed. (2) 637, the Court had under consideration an ad valorem tax and the testimony showed that farm

lands in the district, regardless of value, were assessed at $10.00 per acre, being about 5 to 15 per cent of the value, while railroad property was assessed at over 50 per cent of its value, a discrimination palpably arbitrary and unfair.

We have no fault to find with the other citations of counsel for the appellants and petitioners. In fact, the citations can all be quoted to show that the amendment of 1926 is violative of the Fourteenth Amendment to the Federal Constitution.

In *Eureka Pipe Line Company vs. Hallinan*, 105 S. E. 586; *Clarke vs. Tiltonville*, 104 U. S. 329, 46 L. Ed. 569; *Citizens Telegraph Company vs. Fuller*, 229 U. S. 322; *Quan Wing vs. Kirkendall*, 223 U. S. 59, 56 L. Ed. 250, the courts had under consideration occupation and business taxes, and the classification for purpose of occupation taxes on the basis of amount of business or size of establishment were held valid.

In the cases cited in the brief dealing with inheritance and income taxes, all of the taxes are graduated taxes and the income and inheritance of all parties are taxed alike. The Federal Income Tax Law provides, in cases of married persons, an exemption of $3500.00. This exemption is granted to all alike, regardless of the size of income. The next $5,000.00 of every man's income is taxed at the same rate, and this is true of every class. In the case before this Court, the first mile of the Y. & M. V. Railroad Company is taxed the sum of $350.00, and the first and each and every mile of the branch lines of the Y. & M. V. Railroad Company in the district are taxed at $210.00 a mile, while the entire

system of the Columbus & Greenville Railway Company is taxed at $50.00 a mile. This is not a graduated tax, but in reality an exemption and a palpable and arbitrary discrimination between property of the same kind and character in the same class and situation, occupying identically the same position and receiving in every way the same benefits.

We note that in an attempt to uphold the amendment of 1926, the petitioners (page 66 of brief) uphold the mileage tax and give it a historic background, yet in the first part of the brief, when petitioners want the entire law declared unconstitutional, it attacks the mileage classification.

At Page 69 (e), the Contention Is Made That W. J. Miller, State Tax Collector, Is in No Position to Present the Federal Question.

This is a moot question in this Court, as the tax has been declared invalid by the Supreme Court of Mississippi and the Columbus & Greenville Railroad Company is the appellant and petitioner here. The Supreme Court of Mississippi held that the State Tax Collector was a proper person to attack the validity of a law and insofar as this particular case is concerned, settled this question.

The rule in Mississippi is stated in the case of *Toombs vs. Sharkey*, 140 Miss. 676, 106 So. 273:

> "We are of the opinion that the Board of Supervisors are the fiscal agents of the county in that they levy the county tax, fix the rate, and appropriate the tax money to the objects provided by the law, and that *when a question is presented involving the tax affairs of the county and affecting*

> each and every taxpayer as to whether a less or greater sum shall be paid from the county treasury and there be serious question as to whether the law is void or not, this court will permit a board of supervisors bona fide to test the constitutionality of the statute in question."

See also *Norton vs. Shelby County*, 118 U. S. 425, 30 L. Ed. 178; *State vs. Candland*, 104 Pac. 285, 36 Utah 404, 140 Am. St. R. 834.

Constitutionality of Act Under the State Constitution.

The contention is made that the State Supreme Court held the Act of 1926 constitutional under the Mississippi Constitution. We take issue on this contention, and state that the Mississippi Supreme Court did not pass upon the constitutionality of the act under the Mississippi Constitution. In fact, the pleadings show that the Constitution of Mississippi, Section 234, Article 11, Mississippi Constitution of 1890, requires that all bills affecting taxation or revenue in the Mississippi levee district shall be published in some newspaper published in the county in which is situated the domicile of the board of levee commissioners of the levee district affected thereby, four weeks prior to the introduction thereof in the legislature. (Section 234 is copied in full in the appendix.) The evidence in this case conclusively shows that the bill introduced in 1926 was never published in accordance with the provisions of the constitution, and is, therefore, a void law.

We also direct this Court's attention to Section 14 of the Mississippi Constitution, which provides:

> "No person shall be deprived of life, liberty or property except by due process of law."

The "due process" clause of the Federal Constitution and the Mississippi Constitution have the same meaning in matters of this kind. *Rodge vs. Kelly, Tax Collector*, 88 Miss. 209, 40 So. 552; *Hyland, Sheriff, vs. Sharp*, 88 Miss. 567, 41 So. 264. *D'Aquilla vs. Anderson*, 120 So. 434, 153 Miss. 549.

SUMMARY

The Act of 1926, insofar as the same discriminated between main line railroads less than twenty-five miles in length in the levee district, and main line railroads in excess of twenty-five miles violated the 14th Amendment to the Constitution of the United States, and the "due process" and the "uniformity and equality" clauses of the Mississippi Constitution. The tax being levied and assessed solely for the purpose of building, repairing, and maintaining levees and for protection from overflow, the provisions of the law favoring in its intent and purpose the intrastate railroad located wholly within the state is unreasonable and arbitrary, and bears no relationship to the purpose of the tax, and is a palpable, whimsical and arbitrary discrimination between two similar species of property and between two persons of the same class in the same situation.

We respectfully submit that (a) Chapter 7 of the Acts of 1886, as amended by Chapter 282 of the Acts of 1914,

Laws of Mississippi, is constitutional and does not in any way violate the Fourteenth Amendment to the Constitution of the United States; (*b*) that Chapter 259, Mississippi Laws of 1926, violates the Fourteenth Amendment to the Constitution of the United States in that it is a palpable, whimsical and arbitrary discrimination between the Columbus & Greenville Railway Company and the Yazoo & Mississippi Valley Railroad Company in favor of the former; and (*c*) the decision of the Supreme Court of Mississippi is correct and should be affirmed.

Respectfully submitted,

GEORGE BUTLER,
J. ED. FRANKLIN,
LAMAR F. EASTERLING,
C. B. SNOW,
SIMON ROSENTHAL,
Attorneys for Respondent and Appellee.

APPENDIX

Section 14, Article 3, Mississippi Constitution 1890.

"No person shall be deprived of life, liberty or property except by due process of law."

Section 112, Mississippi Constitution 1890.

"Taxation shall be uniform and equal throughout the state. Property shall be taxed in proportion to its value. The legislature may, however, impose a tax per capita upon such domestic animals as from their nature and habits are destructive of other property. Property shall be assessed for taxes under general laws, and by uniform rules, according to its value. But the legislature may provide for a special mode of valuation and assessment for railroads, and railroad and other corporate property, or for particular species of property belonging to persons, corporations, or associations not situated wholly in one county. But all such property shall be assessed at its true value, and no county shall be denied the right to levy county and special taxes upon such assessment as in other cases of property situated and assessed in the county."

Section 234, Article 11, Levees, Mississippi Constitution 1890.

"No bill changing the boundaries of the district, or affecting the taxation or revenue of the Yazoo Mississippi Delta Levee District, or the Mississippi Levee District, shall be considered by the legislature unless said bill shall have been published in some newspaper in the county in which is situated the domicile of the board of levee

commissioners of the levee district to be affected thereby, for four weeks prior to the introduction thereof in the legislature; and no such bill shall be considered for final passage by either the senate or house of representatives, unless the same shall have been referred to, and reported on, by an appropriate committee of each house in which the same may be pending; and no such committee shall consider or report on any such bill unless publication thereof shall have been made as aforesaid."

We received this afternoon, after the brief was on the press, Volume 70, American Law Reports. We direct the Court's attention, to the able and exhaustive annotation on "Constitutionality of Levee and Flood Control Acts", and the sub-annotations thereunder, "Police Power" and "Due process and equal protection or privilege" at pages 1274 et seq. The annotations support our contentions in every respect.